

AMENDED IN ASSEMBLY JUNE 17, 2015

AMENDED IN ASSEMBLY JUNE 9, 2015

SENATE BILL

No. 307

Introduced by Senator Pavley

February 23, 2015

An act to amend Section 136.2 of the Penal Code, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 307, as amended, Pavley. Restraining orders.

Existing law requires, in all cases in which a criminal defendant is convicted of specified crimes, including any crime for which the defendant must register as a sex offender, the court to consider issuing an order, valid for up to 10 years, restraining the defendant from any contact with the victim. Existing law authorizes the order to be issued by the court regardless of whether the defendant is sentenced to state prison or a county jail, or whether the imposition of sentence is suspended and the defendant is placed on probation.

This bill would additionally authorize the order to be issued by the court regardless of whether ~~the imposition of sentence is suspended and the defendant is placed on~~ *subject to* mandatory supervision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 136.2 of the Penal Code is amended to
2 read:

1 136.2. (a) (1) Upon a good cause belief that harm to, or
2 intimidation or dissuasion of, a victim or witness has occurred or
3 is reasonably likely to occur, a court with jurisdiction over a
4 criminal matter may issue orders, including, but not limited to, the
5 following:

6 (A) An order issued pursuant to Section 6320 of the Family
7 Code.

8 (B) An order that a defendant shall not violate any provision of
9 Section 136.1.

10 (C) An order that a person before the court other than a
11 defendant, including, but not limited to, a subpoenaed witness or
12 other person entering the courtroom of the court, shall not violate
13 any provisions of Section 136.1.

14 (D) An order that a person described in this section shall have
15 no communication whatsoever with a specified witness or a victim,
16 except through an attorney under reasonable restrictions that the
17 court may impose.

18 (E) An order calling for a hearing to determine if an order as
19 described in subparagraphs (A) to (D), inclusive, should be issued.

20 (F) (i) An order that a particular law enforcement agency within
21 the jurisdiction of the court provide protection for a victim or a
22 witness, or both, or for immediate family members of a victim or
23 a witness who reside in the same household as the victim or witness
24 or within reasonable proximity of the victim's or witness'
25 household, as determined by the court. The order shall not be made
26 without the consent of the law enforcement agency except for
27 limited and specified periods of time and upon an express finding
28 by the court of a clear and present danger of harm to the victim or
29 witness or immediate family members of the victim or witness.

30 (ii) For purposes of this paragraph, "immediate family members"
31 include the spouse, children, or parents of the victim or witness.

32 (G) (i) An order protecting a victim or witness of violent crime
33 from all contact by the defendant, or contact, with the intent to
34 annoy, harass, threaten, or commit acts of violence, by the
35 defendant. The court or its designee shall transmit orders made
36 under this paragraph to law enforcement personnel within one
37 business day of the issuance, modification, extension, or
38 termination of the order, pursuant to subdivision (a) of Section
39 6380 of the Family Code. It is the responsibility of the court to
40 transmit the modification, extension, or termination orders made

1 under this paragraph to the same agency that entered the original
2 protective order into the Domestic Violence Restraining Order
3 System.

4 (ii) (I) If a court does not issue an order pursuant to clause (i)
5 in a case in which the defendant is charged with a crime involving
6 domestic violence as defined in Section 13700 or in Section 6211
7 of the Family Code, the court on its own motion shall consider
8 issuing a protective order upon a good cause belief that harm to,
9 or intimidation or dissuasion of, a victim or witness has occurred
10 or is reasonably likely to occur, that provides as follows:

11 (ia) The defendant shall not own, possess, purchase, receive, or
12 attempt to purchase or receive, a firearm while the protective order
13 is in effect.

14 (ib) The defendant shall relinquish any firearms that he or she
15 owns or possesses pursuant to Section 527.9 of the Code of Civil
16 Procedure.

17 (II) Every person who owns, possesses, purchases, or receives,
18 or attempts to purchase or receive, a firearm while this protective
19 order is in effect is punishable pursuant to Section 29825.

20 (iii) An order issued, modified, extended, or terminated by a
21 court pursuant to this subparagraph shall be issued on forms
22 adopted by the Judicial Council of California and that have been
23 approved by the Department of Justice pursuant to subdivision (i)
24 of Section 6380 of the Family Code. However, the fact that an
25 order issued by a court pursuant to this section was not issued on
26 forms adopted by the Judicial Council and approved by the
27 Department of Justice shall not, in and of itself, make the order
28 unenforceable.

29 (iv) A protective order issued under this subparagraph may
30 require the defendant to be placed on electronic monitoring if the
31 local government, with the concurrence of the county sheriff or
32 the chief probation officer with jurisdiction, adopts a policy to
33 authorize electronic monitoring of defendants and specifies the
34 agency with jurisdiction for this purpose. If the court determines
35 that the defendant has the ability to pay for the monitoring program,
36 the court shall order the defendant to pay for the monitoring. If
37 the court determines that the defendant does not have the ability
38 to pay for the electronic monitoring, the court may order electronic
39 monitoring to be paid for by the local government that adopted
40 the policy to authorize electronic monitoring. The duration of

1 electronic monitoring shall not exceed one year from the date the
2 order is issued. At no time shall the electronic monitoring be in
3 place if the protective order is not in place.

4 (2) For purposes of this subdivision, a minor who was not a
5 victim of, but who was physically present at the time of, an act of
6 domestic violence, is a witness and is deemed to have suffered
7 harm within the meaning of paragraph (1).

8 (b) A person violating an order made pursuant to subparagraphs
9 (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be
10 punished for any substantive offense described in Section 136.1,
11 or for a contempt of the court making the order. A finding of
12 contempt shall not be a bar to prosecution for a violation of Section
13 136.1. However, a person so held in contempt shall be entitled to
14 credit for punishment imposed therein against a sentence imposed
15 upon conviction of an offense described in Section 136.1. A
16 conviction or acquittal for a substantive offense under Section
17 136.1 shall be a bar to a subsequent punishment for contempt
18 arising out of the same act.

19 (c) (1) (A) Notwithstanding subdivision (e), an emergency
20 protective order issued pursuant to Chapter 2 (commencing with
21 Section 6250) of Part 3 of Division 10 of the Family Code or
22 Section 646.91 shall have precedence in enforcement over any
23 other restraining or protective order, provided the emergency
24 protective order meets all of the following requirements:

25 (i) The emergency protective order is issued to protect one or
26 more individuals who are already protected persons under another
27 restraining or protective order.

28 (ii) The emergency protective order restrains the individual who
29 is the restrained person in the other restraining or protective order
30 specified in clause (i).

31 (iii) The provisions of the emergency protective order are more
32 restrictive in relation to the restrained person than are the provisions
33 of the other restraining or protective order specified in clause (i).

34 (B) An emergency protective order that meets the requirements
35 of subparagraph (A) shall have precedence in enforcement over
36 the provisions of any other restraining or protective order only
37 with respect to those provisions of the emergency protective order
38 that are more restrictive in relation to the restrained person.

39 (2) Except as described in paragraph (1), a no-contact order, as
40 described in Section 6320 of the Family Code, shall have

1 precedence in enforcement over any other restraining or protective
2 order.

3 (d) (1) A person subject to a protective order issued under this
4 section shall not own, possess, purchase, or receive, or attempt to
5 purchase or receive, a firearm while the protective order is in effect.

6 (2) The court shall order a person subject to a protective order
7 issued under this section to relinquish any firearms he or she owns
8 or possesses pursuant to Section 527.9 of the Code of Civil
9 Procedure.

10 (3) A person who owns, possesses, purchases, or receives, or
11 attempts to purchase or receive, a firearm while the protective
12 order is in effect is punishable pursuant to Section 29825.

13 (e) (1) In all cases in which the defendant is charged with a
14 crime involving domestic violence, as defined in Section 13700
15 or in Section 6211 of the Family Code, or a violation of Section
16 261, 261.5, or 262, or any crime that requires the defendant to
17 register pursuant to subdivision (c) of Section 290, the court shall
18 consider issuing the above-described orders on its own motion.
19 All interested parties shall receive a copy of those orders. In order
20 to facilitate this, the court's records of all criminal cases involving
21 domestic violence or a violation of Section 261, 261.5, or 262, or
22 any crime that requires the defendant to register pursuant to
23 subdivision (c) of Section 290, shall be marked to clearly alert the
24 court to this issue.

25 (2) In those cases in which a complaint, information, or
26 indictment charging a crime involving domestic violence, as
27 defined in Section 13700 or in Section 6211 of the Family Code,
28 or a violation of Section 261, 261.5, or 262, or any crime that
29 requires the defendant to register pursuant to subdivision (c) of
30 Section 290, has been issued, except as described in subdivision
31 (c), a restraining order or protective order against the defendant
32 issued by the criminal court in that case has precedence in
33 enforcement over a civil court order against the defendant.

34 (3) Custody and visitation with respect to the defendant and his
35 or her minor children may be ordered by a family or juvenile court
36 consistent with the protocol established pursuant to subdivision
37 (f), but if ordered after a criminal protective order has been issued
38 pursuant to this section, the custody and visitation order shall make
39 reference to, and, if there is not an emergency protective order that
40 has precedence in enforcement pursuant to paragraph (1) of

subdivision (c), or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no-contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) (1) In any case in which a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under subparagraph (A) of paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(2) In any case in which a complaint, information, or indictment charging a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, has been filed, the court may consider, in determining whether good cause exists to issue an order under

paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by any civil or criminal court involving the defendant, and the defendant's criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or 262, a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, any other forms of violence, or any weapons offense.

(i) (1) In all cases in which a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, *jail or subject to mandatory supervision*, or whether imposition of sentence is suspended and the defendant is placed on ~~probation or mandatory supervision~~ *probation*. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

- 1 (j) For purposes of this section, “local government” means the
2 county that has jurisdiction over the protective order.

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